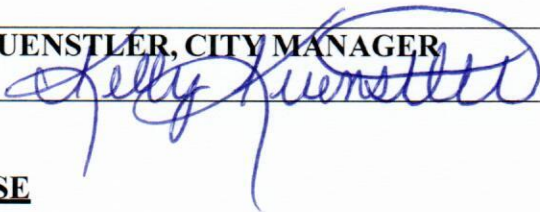




SECTION: HUMAN RESOURCES	REFERENCE NUMBER: A13
SUBJECT: FAMILY MEDICAL LEAVE	INITIAL EFFECTIVE DATE: 03/06/1993
FROM: KELLY KUENSTLER, CITY MANAGER 	LAST REVISION DATE: 11/1/2015

A. **PURPOSE**

In accordance with the Family and Medical Leave Act of 1993, an employee may be eligible to take up to twelve (12) weeks of unpaid family and medical leave during a rolling twelve (12) month period, for any one of the following reasons:

1. The birth of a child and to care for such child, or the placement of a child with the employee for adoption or foster care (leave for this reason must be taken within the 12 (twelve) month period following the child's birth or placement with the employee).
2. In order to care for an immediate family member (spouse, child, or parent) of the employee if such immediate family member has a serious health condition.
3. The employee's own serious health condition that makes the employee unable to perform the essential job functions of their position.
4. Exigency Leave to allow an employee who has a spouse, son, daughter, or parent in the National Guard or Reserves to take FMLA leave due to a qualifying exigency resulting from the covered family member's active military duty (or call to active duty status) in support of contingency operation.
5. Military Caregiver Leave to allow an employee who is the spouse, son, or daughter, parent or next of kin of a service member in the Regular Armed Forces, National Guard or Reserves (who has incurred a serious injury or illness in the line of duty while on active duty) to take FMLA leave to care for the service member.

B. **DEFINITIONS**

1. **12 (twelve) month period** – means a rolling 12 (twelve) month period measured backward from the date leave is taken. Each time an employee takes FMLA leave, the remaining leave entitlement

would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months, or 26 weeks provided in certain circumstances.

2. **Immediate family member** – includes spouse, child, or parent. Step relationships are included; in-laws and unmarried domestic partners are not included.
3. **Child** – means a child either under 18 (eighteen) years of age, or 18 (eighteen) years of age or older who is incapable of self-care because of a mental or physical disability. An employee's "child" is one for whom the employee has actual day-to-day responsibility for care and includes a biological, adopted, foster or step-child.
4. **Serious health condition** – means illness, injury impairment, or physical or mental condition that involves:
 - a. Inpatient care.
 - b. Any period of incapacity requiring absence from work for more than three (3) consecutive calendar days or two or more shifts for Fire Department employees and that involves continuing treatment by a health care provider.
 - c. Continuing treatment by a health care provider for a chronic or long-term health condition that is insurable or which, if left untreated, would likely result in a period of incapacity of more than five (5) consecutive calendar days.
 - d. Prenatal care by a health care provider. The father may take leave for pregnant spouse's pre-natal care and appointments (including providing transportation) and to provide care after birth if spouse has serious health condition, but if the father is not married to the pregnant mother, the father is not eligible for FMLA leave for pregnancy issues, prenatal care, or to care for the mother during the period of disability following childbirth.
5. The following conditions are generally not considered to be serious health conditions unless complications arise: the common cold, the flu, ear aches, upset stomachs, minor ulcers, headaches other than migraine, routine dental problems and periodontal disease are not considered serious health conditions. In addition to these conditions, an absence caused by an employee's abuse of a substance, rather than for treatment for the problem, does not qualify for FMLA leave and is not considered a serious illness.
6. **Continuing treatment** – means:
 - a. Two (2) or more visits to a health care provider.
 - b. Two (2) or more treatments by a health care practitioner on referral from, or under the direction of a health care provider.

- c. A single visit to a health care provider that results in a regimen of continuing treatment.
 - d. In the case of a serious, long-term or chronic condition or disability that cannot be cured, being under the continuing supervision of, but not necessarily being actively treated by, a health care provider.
7. **Health Care Provider** - A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or any other person determined by the Secretary of Labor to be capable of providing health care services. A more expansive definition is provided in the Family and Medical Leave Act of 1993 which is available in the Human Resource Department.

C. **RESPONSIBILITIES**

- 1. The Department Head is responsible for informing subordinate employees of this policy through the distribution of this directive.
- 2. The employee is responsible for complying with the policies and procedures outlined in this procedural directive.
- 3. The Human Resources Director is responsible for ensuring that the city is adhering to any additional guidelines that are not outlined in this directive, but are clearly stated within the Family Medical Leave Act of 1993, and as amended in 2008 (**Attachment B**).

D. **ELIGIBILITY**

To be eligible for leave covered under the FMLA, an employee must:

- 1. Have been employed by the City of Leon Valley for at least 12 (twelve) months.
- 2. Have worked at least 1,250 hours over the previous 12 (twelve) month period, immediately preceding the commencement of the leave.

E. **INTERMITTENT OR REDUCED LEAVE**

- 1. An employee may take leave intermittently (a few days or a few hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition or because of a serious health condition of the employee when "medically necessary".

- a. **Medically necessary** - means there must be a medical need for the leave versus voluntary treatments and procedures; if the leave is intermittent or on a reduced schedule, the employee's health care provider must state that such leave is medically necessary and explain why, that leave can best be accomplished through an intermittent or reduced leave schedule.
- b. The employee may transfer temporarily to a position with equivalent pay and benefits that better accommodates recurring periods of leave when the leave is planned based on scheduled medical treatment only with approval of the Department Heads affected.
2. An employee may take leave intermittently or on a reduced leave schedule for birth or placement for adoption or foster care of a child only with the City Manager's prior approval.
3. For part-time employees and those who work variable hours, the family and medical leave entitlement is calculated on a pro-rata basis. A weekly average of the hours worked over the 12 (twelve) work weeks prior to the beginning of the leave should be used for calculating the employee's normal workweek.

F. **SUBSTITUTION OF SICK LEAVE AND VACATION**

1. For provisions Section A 1-5, the city requires the use of the appropriate type of paid leave in accordance with the City's Personnel Manual. Upon the exhaustion of applicable types of sick leave (sick leave, major medical leave or long term leave), the employee will have the option to use their accrued personal leave, annual leave, compensatory time or holiday leave in lieu of unpaid FMLA leave.
2. Both paid and unpaid leave will be counted toward the maximum 12 (twelve) work week's entitlement. This means that an employee will not be entitled to 12 (twelve) work weeks of unpaid leave in addition to any paid leave taken for FMLA.
3. Effective May 5, 2009, any leave granted under the provisions of this directive will not be counted against the City's 90 day absence policy, in accordance with Article Five, Section VI (D) of the City's Personnel Manual.

G. **NOTICE REQUIREMENT**

1. An employee is required to give 30 (thirty) calendar day's notice in the event of foreseeable leave. A "Request for Family/Medical Leave" form (**Attachment A**) must be completed by the employee and returned to the Human Resources Office to give the 30 (thirty) day notice.
2. In unexpected or unforeseeable situations, it is expected that an employee will provide as much notice as is practicable, usually verbal notice within one (1) or two (2) business days of when the need for leave becomes known, followed by a completed "Request for Family/Medical Leave" form (**Attachment A**). Verbal notice is to be given to both the Human Resources Director and the employee's supervisor.

3. If an employee fails to give thirty days notice for a foreseeable leave with no reasonable excuse for the delay, the leave may be denied until 30 (thirty) days after the employee provides notice.
4. For absences due to an illness or injury of three (3) or more consecutive calendar days or two or more shifts for Fire Department personnel due to a situation outlined in Section A above, an employee will be required to apply for leave under the provisions of this Procedural Directive. The period of time in excess of a five (5) calendar day period will be designated as FMLA leave by the City.
5. The Human Resources Officer will determine the type of FMLA leave as outlined in Section A above; the employee qualifies for in the event the request for leave is not requested in a timely manner.
6. The City will determine and designate "up front" before any FMLA leave starts whether any leave to be taken counts towards an employee's FMLA leave entitlement. Only where leave has already begun and the City did not have sufficient information to determine whether the absence qualified for leave under FMLA, will the leave be retroactively designated as FMLA leave.
7. Failure to submit the appropriate paperwork as required by this directive could cause the use of sick leave or major medical leave to be suspended.
8. The City's Human Resources Office will verify the eligibility of the employee for the leave. If the employee is eligible for the leave, the Request for Family/Medical Leave will be forwarded for City Manager approval of the leave. The City Manager or his/her designee will indicate approval and conditions for the leave (**Attachment C**).

H. **MEDICAL CERTIFICATION**

1. For leave taken because of the employee's or a covered family member's serious health condition, the employee must submit a completed "Certification of Health Care Provider for Employee's Serious Health Condition" form (**Attachment D**) or "Certification of Health Care Provider for Family Member's Serious Health Condition" form (**Attachment E**) in addition to the "Request for Family/Medical Leave" form (**Attachment A**) and return these documents to the Human Resources Director. Medical certification must be provided by the employee within 15 (fifteen) days after requested, or as soon as is reasonably possible.
2. The City may require a second or third opinion, at its own expense, for periodic medical status report on the employee's fitness to return to duty.
3. Prior to being allowed to return to work because of recovery from a serious health condition, the treating physician will certify in writing, based on the job description, that the employee can return to duty.

4. For leave taken because of Exigency or Military Caregiver Leave the employee must submit a completed "Certification of Qualifying " form (**Attachment F**) or "Certification For Serious Injury or Illness of Covered Service Member For Military Leave" form (**Attachment G**) in addition to the "Request for Family/Medical Leave" form (**Attachment A**) and return these documents to the Human Resources Officer. Medical certification must be provided by the employee within 15 (fifteen) days after requested, or as soon as is reasonably possible.

I. **EFFECT ON BENEFITS**

1. An employee granted leave under this policy will continue to be covered under the City of Leon Valley employee health/dental insurance, life insurance plan, and other applicable programs under the same conditions as coverage would have been provided if they had been continuously employed during the leave period. This means that the City will continue to pay the costs of such benefits as when the employee was in active pay status. In the case of dependent health coverage, the employee will be responsible for payment of the employee's premium share as outlined below.
2. Employee contributions for the health insurance elections of their family members will be required either through payroll deduction or by direct payment to the City of Leon Valley. The employee will be advised in writing at the beginning of the leave period as to the amount and method of payment. Employee contribution amounts are subject to any change in rates that occur while the employee is on leave.
3. If an employee's contribution is more than 30 (thirty) days late, the City of Leon Valley may terminate the employee's insurance coverage.
4. If the City pays the employee contributions missed by the employee while on leave, the employee will be required to reimburse the City for delinquent payments upon their return from leave.
5. If the employee fails to return from unpaid family/medical leave for reasons other than one (1) the continuation of a serious health condition of the employee or a covered family member, or two (2) circumstances beyond the employee's control (certification required within 30 (thirty) days of failure to return for either reason), the City may seek reimbursement from the employee for the portion of the premiums paid on behalf of that employee (also known as the employer contribution) during the period of leave.
6. Nothing in this section will be construed to entitle any restored employee to:
 - a. The accrual of any employment benefits during any period of leave.
 - b. Any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken leave.

J. **JOB PROTECTION**

1. If the employee is not determined to be a “key employee”, as defined by the Family Medical Leave Act, and returns to work within 12 (twelve) work weeks following a family/medical leave, they will be reinstated to their former position or an equivalent position with equivalent pay, benefits, status and authority.
2. The employee’s restoration rights are the same as they would have been had the employee not been on leave. Thus, if the employee’s position would have been eliminated or the employee would have been terminated but for the leave, the employee would not have the right to be reinstated upon return from leave.
3. If the employee fails to return within 12 (twelve) work weeks following a family/medical leave, the employee will be reinstated to their same or similar position, only if available, in accordance with applicable laws. If the employee’s same or similar position is not available, the employee may be terminated.

K. **EXEMPTION CONCERNING HIGHLY COMPENSATED EMPLOYEES**

1. **Key employee** – An eligible employee affected by this section is a salaried eligible employee who is among the highest paid 10 (ten) percent of the City.
2. The City Manager, at his/her discretion, may deny restoration to a position to any eligible employee described above if:
 - a. Such denial is necessary to prevent substantial and grievous economic injury to the operation of the City.
 - b. The City notifies the employee of the intent of the City to deny restoration on such basis at the time the City determines that such injury would occur.
 - c. In any case in which the leave has commenced and the employee elects not to return to employment after receiving such notice as described above.

L. **ATTACHMENTS**

- A - Request for Family/Medical Leave
- B - Notice of Rights and Responsibility form
- C - Designation Notice
- D - Certification of Health Care Provider for Employee’s Serious Health Condition
- E - Certification of Health Care Provider for Family Member’s Serious Health Condition
- F - Certification of Qualifying Exigency for Military Family Leave
- G - Certification for Serious Injury or Illness of Covered Service Member

REQUEST FOR FAMILY/MEDICAL LEAVE

Employee Name: _____ Date of Request: _____

Department: _____ Position Title: _____

Hire Date: _____

I request Family/Medical Leave for the following reason (check one):

- ☐ A. The birth of a child and in order to care for such child, the placement of a child for adoption or foster care, or adoption/foster care of a child;
- ☐ B. In order to care for an immediate family member if such family member has a serious health condition. Circle one: CHILD - SPOUSE - PARENT (Must submit "Physician or Practitioner Certification" within fifteen calendar days);
- ☐ C. Employee's own serious health condition that makes the employee unable to perform the functions of his/her position. (Must submit "Physician or Practitioner Certification" within fifteen calendar days).
- ☐ D. Exigency Leave to allow an employee who has a spouse, son, daughter, or parent in the National Guard or Reserves to take FMLA leave due to a qualifying exigency.
- ☐ E. Military Caregiver Leave

METHOD OF LEAVE REQUESTED

- ☐ A. Consecutive Leave
- ☐ B. Intermittent or Reduced Leave Schedule (Specify Schedule Below)

Date leave is to begin: _____

Expected duration of leave: _____

If the duration of my family/medical leave (total of paid and unpaid time) does not exceed twelve work weeks, I will be returned to my same or equivalent position. I understand that if my family/medical leave should exceed twelve weeks, I may be returned to my same or similar position, only if available, in accordance with applicable state/federal laws and City policy. If my same or similar position is not available, I understand that I may be terminated.

Employee Signature

Date